IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No. 1482 of 2004

AND

WRIT PETITION No.14669 of 2004

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WRIT APPEAL No.1482 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 7.9.2004 in W.P.M.P.No. 18893 of 2004 in W.P.No. 14669 of 2004 on the file of the High Court.)

Between:

M/s Cosy World Resorts Limited,

67-15-32, Nagamallethota Junction, Kakinada,

East Godavari District. ..... APPELLANT

AND

1 The Superintending Engineer (Operation), A.P. Eastern Power

Distribution Company Limited, Rajahmundry, East Godavari District.
2 The Chief General Manager, O & CS A.P. Eastern Power Distribution

Company Limited, Visakhapatnam, Visakhapatnam District.
3 A.P. Eastern Power Distribution Company Limited , rep.by its

Chairman and Managing Director, Visakhapatnam,
Visakhapatnam District.
4 The Senior Accounts Officer, Operation Circle, A.P.Eastern Power

Distribution Company Limited, Rajahmundry, East Godavari District.

.....RESPONDENTS

Counsel for the Appellant : Mrs.D.GEETHA

Counsel for Respondents : Smt.M.VINOBHA DEVI

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WRIT PETITION No.14669 of 2004

Between:

M/s Cosy World Resorts Limited,

67-15-32, Nagamallethota Junction, Kakinada,

East Godavari District ..... PETITIONER

AND

1 The Superintending Engineer (Operation), A.P. Eastern Power

Distribution Company Limited, Rajahmundry, East Godavari District.
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Distribution Company Limited, Rajahmundry, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue an appropriate writ, order or direction more particularly one in the nature of writ of certiorari (i) calling for the records pertaining to the proceedings No.SE/O/RJY/F.HT/D.No.166/04, dated 31-7-2004 directing the petitioner company to pay an amount of Rs.21,14,152/- towards the short assessment of billing for the period from 23-2-2002 to 22-3-2004, declare the same as illegal, arbitrary and unconstitutional apart from being violative of principles of natural justice and quash the same.

The Court at the admission stage made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

The appellant has filed the writ petition questioning the legality and validity of the order dated 31-7-2004 passed by the Superintending Engineer (Operations), Rajahmundry of the respondent Corporation, calling upon the appellant to pay shortfalls in the bills to the tune of Rs.21,41,152/-. The appellant was given liberty to approach the Chief General Manager/O&CS/APEPDCL, Visakhapatnam, within thirty days of the receipt of the said order, by filing appeal duly depositing 50% of the demanded amount. The said order was impugned in the writ petition.

The writ petition was filed alleging that the condition imposed by the Corporation that appeal can be entertained only if 50% of the demanded amount, which the appellant was asked to pay towards shortfalls, is onerous.

On filing the writ petition, unconditional order was passed on 30-8-2004 directing the respondents not to take any coercive steps against the appellant, and on filing of the counter affidavit by the respondents, the order passed on 30-8-2004 has been modified by the learned single Judge on 7-9-2004 directing interim suspension on condition of depositing 50% of the demanded amount in two equal instalments. The appeal is against the said order.

We have heard the learned counsel for the parties.

As a matter of fact, earlier the appellant has filed W.P.No.8721 of 2004 questioning the demand letter dated 21-4-2004 issued by the respondent Corporation towards shortfall amount. The writ petition was allowed and the impugned demand letter was set aside with a direction to the respondents to consider the matter afresh after issuing show cause notice to the appellant and hearing the appellant's objections. The appellant's objections were heard and appreciated and again the impugned order was passed directing the appellant to pay the demanded amount.

It is not a case of pilferage or a case of malpractice. The dispute between the parties is whether there is any shortfall in the billing or whether the respondents are making the shortfalls good. There was failure of CT-PT set provided in the H.T. service and on the complaint of the appellant, there was no replacement with similar CT-PT set with ratio of 10/5, but by a metering cubicle of 20/5 C.T. ratio.

The question in the appeal will be whether the respondents are justified in changing a different type of meter than the meter, which the appellant was having, and if there was any shortfall in the bill on account of different type of meter, whether it was proper on the part of the respondents to demand the shortfall amount?

In our view, the condition of requiring the appellant to pay 50% of the demanded amount as per Clause 39.8.1 of the Terms and Conditions of Supply may not be strictly applied to the appellant since there was no malpractice or pilferage.

Therefore, we dismiss the writ petition by relegating the appellant to the remedy of appeal and question the order of the Corporation with a direction that in case the appellant will deposit 1/4th of the demanded amount within a period of six weeks along with the appeal preferred by it, the appeal will be entertained by the respondents without any objection about the deposit of 50% of shortfalls in billing and as to limitation. The writ appeal stands disposed of. No costs.

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DEVINDER GUPTA, C.J.

24th September 2004.

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C.V.RAMULU, J.

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To

1 The Superintending Engineer (Operation), A.P. Eastern Power

Distribution Company Limited, Rajahmundry, East Godavari District.
2 The Chief General Manager, O & CS A.P. Eastern Power Distribution

Company Limited, Visakhapatnam, Visakhapatnam District.
3 The Chairman and Managing Director, A.P. Eastern Power

Distribution Company Limited , Visakhapatnam,
Visakhapatnam District.
4 The Senior Accounts Officer, Operation Circle, A.P.Eastern Power

Distribution Company Limited, Rajahmundry, East Godavari District.

5 Two CD copies.